



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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September 21, 2015

Melissa Crawford  
344 Clark Rd.  
Charlestown, IN 47111

*Re: Formal Complaint 15-FC-231; Alleged Violation of the Access to Public Records Act by the City of Charlestown*

Dear Ms. Crawford,

This advisory opinion is in response to your formal complaint alleging the City of Charlestown ("Charlestown") and Michael Gillenwater violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Charlestown has responded to your complaint via counsel, Mr. Michael Gillenwater, Esq., City Attorney. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 10, 2015.

## **BACKGROUND**

Your complaint dated August 7, 2015 alleges that the City of Charlestown violated the APRA by denying you access to records. On May 4, 2015, you requested, in writing, a copy of the city ordinance/resolution that specifically names the "Pleasant Ridge" subdivision as a blighted area within the City.

On June 1, Mr. Gillenwater informed you that it was not the responsibility of the City to search for records relating to the ordinance. You were informed that you could search city records yourself, if you wished, in the office during normal business hours.

On June 30, you received a letter from the City Attorney denying your request for a lack of reasonable particularity. Mr. Gillenwater indicated the City can provide access to a specific ordinance if the person requesting the information has an ordinance number. Additionally, Mr. Gillenwater stated that your request was vague with regard to a time frame when the ordinance might have been adopted and would require a search through "decades of documents" to locate all the ordinances described in your request. You were informed that you could search those records yourself.



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On August 19, Charlestown responded to your complaint, asserting that the City's actions were proper under the law.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The City of Charlestown is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Any person has the right to inspect and copy Charlestown's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The APRA requires all requests to be "reasonably particular," although this term is not specifically defined by the statute. The Public Access Counselor has repeatedly held that "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." Importantly, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is on the public agency, if an agency needs a clarification of a request, the agency should contact the requester for more information rather than simply denying the request.

The Court in *Jent v. Fort Wayne Police Department*, 973 N.E.2d, 30 (Ind. Ct. App. 2012) opined: "a requested item has been designated with 'reasonable particularity' if the request enables the subpoenaed party to identify what is sought and enables the trial court to determine whether there has been sufficient compliance with the request."

It appears as if you described the public record you were looking for with a sufficient amount of specificity. Your request does not cast a wide net or appear to be a 'fishing expedition'. The reasonable particularity standard is to protect against such endeavors and protect a public agency from having to go on a wild goose chase hunting for documents it may or may not have. A requester does not have to identify a document (or ordinance) with pinpoint accuracy. That said, a public agency also does not have to do legal research on your behalf. However, a governing body that passed an ordinance is in the best position of anyone to quickly identify a described ordinance and present it to you.



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Based upon the evidence provided, your request seemed to be summarily dismissed by the City attorney without any meaningful consideration given to the General Assembly's statement that "[p]roviding persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The spirit of the APRA has clearly been compromised by the City's misunderstanding of the philosophy of governmental transparency.

The City makes much over its interpretation of APRA not requiring a public agency to search for and produce a record. However, the Court in *Jent* makes it clear that, "[i]n response to a request under APRA, a public agency is required to search for, locate and retrieve records." I take great exception to the City's assertion that "[i]mposing a duty to seek and find on public officials was never contemplated or required by the APRA." This leans against every fundamental tenet of the Access to Public Records Act. Public agencies have an affirmative duty to locate and produce requested records or alternatively give thoughtful consideration to a denial based upon statutory exemptions to disclosure.

Simply put, the effort taken to justify the denial through this formal complaint process likely exceeds the effort needed to search for and find the records requested. Had anyone from the City meaningfully screened and evaluated the legitimacy of the public records request filed by you, it might ultimately have saved the City the inconvenience of responding to a formal complaint.

If the record you have sought does not exist, as the City claims, then there is nothing to produce and they have not violated the APRA. But it seems like a search was never performed, relying on the pretext of a general assertion of lack of reasonable particularity. I encourage the City to revisit your request at its soonest possible convenience.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

**Luke H. Britt**  
Public Access Counselor



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Cc: Michael Gillenwater, Esq.